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HAROLD B. WILLEY, Clerk

IN THE SUPREME COURT OF THE UNITED STATES

No. 451

OCTOBER TERM, 1952

GRADY D. ALLEN ..... Petitioner

Versus

THE STATE OF MISSISSIPPI ..... Respondent

PETITION FOR WRIT OF CERTIORARI

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

Your petitioner, Grady D. Allen, respectfully petitions this Honorable Court for a Writ of Certiorari to the Supreme Court of the State of Mississippi.

STATEMENT OF MATTERS INVOLVED

This case involves the right of a citizen of the United States accused of crime to trial by jury.

The appellant was cited for constructive criminal contempt committed outside the presence of the Court, by the Chancellor of the Chancery Court of Rankin County, Mississippi; he was tried at a hearing before the same Chancellor who cited him for such contempt upon a bill of information presented in said Court by three attorneys appointed by said Court for the express purpose of preparing said bill of information and representing the State of Mississippi in said hearing before said Chancellor against this appellant. A motion to quash the bill of information was filed prior to said hearing and one of the points raised in said motion was the constitution-

ality of said proceeding. This motion was over ruled by said Chancellor who thereupon proceeded to hear the testimony in said case and at the close thereof adjudged the appellant in constructive criminal contempt and sentenced the defendant to a jail sentence and a five hundred dollar fine. That thereupon the cause was appealed to the Supreme Court of Mississippi where the constitutionality of said hearing was again brought to the Court's attention by way of a suggestion of error to the Court's opinion in affirming the judgment of the lower Court.

It is the position of the appellant that the action of the Supreme Court of Mississippi in affirming the judgment and sentence of the Chancellor and in over-ruling the suggestion of error to its opinion filed in this cause amounted to a deprivation of the rights to a trial by jury of one accused of crime in violation of Article 3, Paragraph 2 of the Constitution of the United States and of the Sixth Amendment to the Constitution of the United States and that, further, he was denied his rights and privileges of due process under the 14th Amendment to the Constitution of the United States.

THIS COURT HAS JURISDICTION.

We believe that the Supreme Court has jurisdiction to review the judgment here in question under Title 28, (Now Sec. 1257(3)) Section 344, of the U. S. Code Annotated (Being Judicial Code, Section 237, amended) which reads as follows, to-wit:

> (b) It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree

has been rendered or passed by the highest court of a state in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States: or where is drawn in question the validity of a statute of any state on the ground of it being repugnant to the Constitution, treaties, or laws of the United States; *or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution,* or any authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the Federal Claim is sustained as where it is denied. Rule 30, Rules of the Supreme Court of the United States.

Jurisdiction is sought on the grounds that the petitioner, Grady D. Allen, was denied his constitutional rights as herein above set out and that the Supreme Court of the State of Mississippi has decided a constitutional question in direct conflict with the Fourteenth Amendment and the due process clause thereunder, of the Constitution of the United States and also in conflict with the rights of a citizen charged with crime to a speedy and public trial by an impartial jury under the Sixth Amendment to the Constitution of the United States and, also, in conflict with Article 3, Paragraph 2 of the Constitution of the United States guaranteeing to every citizen charged with crime the right of trial by jury.

This appeal is from a final judgment by the highest Court in the State of Mississippi in which the decision could be had. The suggestion of error was overruled on the 25th day of February, 1952, and the application for review was granted by the Honorable Chief Justice of the Supreme Court of Mississippi on the 29th day of February, 1952, and that the appeal to this Honorable Court was perfected by the posting of a cost bond and appear-

ance bond with supersedeas approved by the Clerk of the Supreme Court of Mississippi on the 29th day of February, 1952.

Petitioner has had the decision of the trial Court reviewed on appeal in the State Supreme Court, and filed therein a suggestion of error covering the constitutional questions brought here to the attention of this Court.

There has been a final determination of a constitutional question by the highest Court of the State of Mississippi and petitioner has exhausted all his remedies in the State Courts and he now, therefore, seeks to have the decision of the State Supreme Court reviewed on certiorari by this Honorable Court.

REASONS RELIED UPON FOR ALLOWANCE OF WRIT.

A substantial constitutional question presents itself with respect to the right of a criminally accused to a fair, speedy and public trial by jury. It is the opinion of petitioner that to force him to trial upon a criminal constructive contempt charge, committed outside the presence of the Court, before the same Judge who cites him for such contempt and his prosecution by attorneys appointed by said Court for the express purpose of drawing the bill of information against petitioner and to conduct the prosecution against him, all without the benefit of an impartial jury, is an infringement upon the rights of this petitioner and in direct conflict with the constitutional safeguards herein before set out. (*Sacher vs. United States*, 343 U.S. 1, 96 L.Ed. (5Adv. 10) 437)

PRAYER

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this Court, directed to

the Supreme Court of the State of Mississippi, commanding said Court to certify and send to this Court a full and complete transcript of the record, and of the proceedings of the said Supreme Court of the State of Mississippi had in the Case numbered and entitled on its Docket No. 38,266, John B. Higgins and Grady D. Allen vs State of Mississippi, (56 So. (2) 61) to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States; And that the Judgment herein of said Supreme Court of the State of Mississippi may be reversed by the Court, and for such further relief as to this Court may seem proper.

This the 29th day of May, 1952.

COLIN L. STOCKDALE
Of Counsel for Petitioner.

This January 9, 1953

FORREST B. JACKSON
Of Counsel for Petitioner.

CERTIFICATE

I hereby certify service of copy on the Attorney General of Mississippi, Counsel for Respondent. This January 9, 1953.

Of Counsel.